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Saskatchewan Legislative Assembly

Member
Bakken

December 19, 2001

Mr. Gerald Gerrand
Conflict of Interest Commissioner
500-2220 12th Avenue
Regina, Saskatchewan
S4P 0M8

Dear Mr. Gerrand:

I am writing to request an investigation into former Executive Council member Eric Upshall for possible violations of ***The Members' Conflict of Interest Act.***

On December 17, 2001, Mr. Upshall filed a Statement of Claim in Regina against Kevin Durst. I have included a copy of this Statement of Claim for your information.

In his Statement of Claim, Mr. Upshall indicates that he entered into two contracts with Saskatchewan Agriculture and Food – one on March 6, 2000 and the other on June 29, 2000. With regard to the second contract, Paragraph 11 of Mr. Upshall's Statement of Claim states: "that most of the early work under the second contract was performed by him, and that this work consisted primarily of securing the contract (and) initiating contacts with relevant government officials."

Section 34(1) of ***The Members' Conflict of Interest Act*** states:

> *No former member of the Executive Council shall, unless 12 months have expired after the date when he or she ceased to hold office:*
>
> ***(a) accept a contract or benefit that is awarded, approved or granted by the Executive Council or an employee of a department, secretariat, or office of the Government of Saskatchewan or a Crown corporation, including a corporation in which the Government of Saskatchewan owns a majority of shares; or***
> ***(b) make representations on his or her own behalf or on behalf of any of the former member's family with respect to a benefit or contract.***

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Mr. Upshall was defeated as an MLA on September 16, 1999 and was replaced as Minister of Agriculture on September 30, 1999. Therefore, both of the contracts with Saskatchewan Agriculture and Food mentioned in Mr. Upshall's Statement of Claim were entered into prior to the completion of the 12 month "cooling off period" prescribed in the *Act*.

Section 8(1) of the *Act* states:

> ***The Executive Council, a member of the Executive Council or an employee of a department, secretariat or office of the Government of Saskatchewan or a Crown corporation, including a corporation in which the Government of Saskatchewan owns a majority of shares, shall not knowingly award a contract to or approve a contract with or grant a benefit to, a former member of Executive Council or to any of the former member's family until 12 months have expired after the date on which the former member ceased to hold office.***

Therefore, any member of Executive Council or other government employee involved in awarding these contracts to Mr. Upshall would also be in violation of the *Act*. Since Mr. Upshall's Statement of Claim indicates that his work consisted of "securing the contract and initiating contacts with relevant government officials," I am also asking you to determine who these officials were and whether their actions constituted a violation of Section 8 of the *Act*. Specifically, I am asking whether former Agriculture Minister Dwain Lingenfelter and/or current Agriculture Minister Clay Serby were aware of these contracts with Mr. Upshall.

Thank you for your attention to this important matter.

Sincerely,

Brenda Bakken.

Brenda Bakken, MLA
Weyburn-Big Muddy

cc Honourable Clay Serby
Deputy Premier/Minister of Agriculture

CLAIM

1. The Plaintiff, ERIC UPSHALL, is a resident of Regina, in the Province of Saskatchewan.

2. The Defendant, KEVIN DURST, was, at all material times to this action, a resident of Regina, in the Province of Saskatchewan.

3. In March 2000, the Plaintiff and Defendant agreed to form a partnership under the business name of DMZ Direct Marketing.Com for the purpose of carrying on business in the Province of Saskatchewan. The partnership was never registered, but the business name was to be used in the future as a vehicle for payment to the Plaintiff and Defendant. The Plaintiff states that DMZ Direct Marketing.Com was the name previously used in a business venture by the Defendant.

4. The Plaintiff states that until the partnership was registered he and the Defendant agreed to use the existing bank account of Kevin Durst and Associates, a business name registered by the Defendant, and that, to the best of the Plaintiff's knowledge, the Defendant retained sole authority over banking transactions in respect of that account.

5. The Plaintiff states that he and the Defendant orally agreed that the earnings of their partnership paid to and through Kevin Durst and Associates would be divided between them on an equal basis.

6. The Plaintiff states that he and the Defendant, under the business name Kevin Durst and Associates, entered into a contract dated March 6, 2000 with Saskatchewan Agriculture and Food, to design and test a survey instrument. The Plaintiff and the Defendant completed the work under the contract and were paid $9,000.00 pursuant to the terms of the contract and, in accordance with their agreement, the Plaintiff and Defendant each received $4,500.00

7. On June 29, 2000, the Plaintiff and Defendant secured a second contract in the name of Kevin Durst and Associates for survey and analysis work required by Saskatchewan Agriculture and Food. Kevin Durst and Associates was to be paid $50,000.00, in two installments, for completing the work under the second contract. The first installment was in the amount of $30,000.00 and the second installment was to be in the amount of $20,000.00.

8. Under the terms of the second contract, Saskatchewan Agriculture and Food made its first payment to Kevin Durst and Associates on July 18, 2000, in the amount of $30,000.00. Monies received from the first payment under the second contract were divided equally between the Plaintiff and Defendant. In April, 2001 $20,000.00 was paid to Kevin Durst and Associates as a second and final payment on the second contract. The Plaintiff has received no monies from the $20,000.00 payment.

9. The Plaintiff states that a third contract was entered into by the Plaintiff and Defendant, under the name of Kevin Durst and Associates, with the Federal Department of Agriculture and Agri-Food Canada whereby Agriculture and Agri-Food Canada was to purchase the results of the survey and analysis work prepared pursuant to the second contract for the sum of $27,500.00. The Plaintiff states that it was agreed that all payments would be made to Kevin Durst and Associates by Agriculture and Agri-Food Canada.

10. The Plaintiff states that Agriculture and Agri-Food Canada made its payment to Kevin Durst and Associates pursuant to the terms of the third contract but that the Plaintiff has never received his equal share of the contract proceeds from Kevin Durst and Associates.

11. The Plaintiff states that most of the early work under the second contract was performed by him, and that this work consisted primarily of securing the contract,

initiating contacts with relevant government officials, determining scope of work, identifying and contacting appropriate survey respondents, distributing and ensuring return of correctly-completed questionnaires. The Plaintiff states that the Defendant's primary work was in the collation and analysis of the questionnaire results and the preparation of a final report.

12. The Plaintiff states that during the course of the Defendant's work, the Defendant was unable to perform some of the required analysis and other tasks, and that some of this work was out-sourced to another firm for completion. The details of the out-sourcing arrangements and costs thereof are not known to the Plaintiff.

13. Upon completion of the final report in 2000, Kevin Durst and Associates received final payments under the second and third contracts in the following amounts:

From Saskatchewan Agriculture and Food - $20,000.00
From Agriculture and Agri-Food Canada - $27,500.00

14. The Plaintiff states that officials of Saskatchewan Agriculture and Food contacted the Defendant following completion of the report and asked that a presentation be made to them of the report's findings. The Defendant complied with the request and at no time informed the Plaintiff of the request or otherwise solicited his participation in the presentation.

15. Despite repeated requests and a demand for same, the Defendant has refused and continues to refuse to pay half of the final payments to the Plaintiff, being the amount of $23,750.00. The Plaintiff states that the outstanding $23,750.00 is a debt due and owing from the Defendant to the Plaintiff.

16. The Plaintiff therefore claims the following relief from the Defendant:

a. Payment of or judgment in the amount of $23,750.00, representing one-half of the proceeds from the final payments under the second and third contracts, as a debt due and owing;

b. Interest on the sum of $23,750.00, from May 1, 2001, to the date of payment or judgment calculated in accordance with the provisions of *The Pre-judgment Interest Act*, S.S. 1984-85-86, c. P-22.2.;

c. Costs of the within action.

DATED at the City of Regina, in the Province of Saskatchewan, this 17th day of December, 2001.

OLIVE WALLER ZINKHAN & WALLER

PER:
Solicitors for the Plaintiff, Eric Upshall

This document was delivered by:

OLIVE WALLER ZINKHAN & WALLER
Barristers and Solicitors
2255 Thirteenth Avenue
Regina, Saskatchewan
S4P OV6

Address for Service: Same as Above

Lawyer in Charge of File: Perry D. Erhardt

Telephone: (306) 359-1888

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Q.B.G. No. 383 of 2001

IN THE COURT OF QUEEN'S BENCH
JUDICIAL CENTRE OF REGINA

QUEEN'S BENCH
JUDICIAL CENTRE of REGINA
DEC 17 2001
FILED

BETWEEN:

ERIC UPSHALL

PLAINTIFF

AND:

KEVIN DURST

DEFENDANT

AND:

CANADA TRUST

PROPOSED GARNISHEE

AFFIDAVIT of ERIC UPSHALL

I, ERIC UPSHALL, of the City of Regina, in the Province of Saskatchewan, MAKE OATH AND SAY:

1. THAT I am the Plaintiff herein and as such have a personal knowledge of the facts and matters deposed to herein except where stated to be based upon information and belief, and where so stated, I verily believe the same to be true.

2. THAT the Defendant and I secured three (3) separate contracts for work which we undertook to complete together. The first two contracts were with Saskatchewan Agriculture and Food and the third was with Agriculture and Agri-Food Canada.

3. With respect to each of the contracts, the Defendant and I were to share the contract proceeds on an equal basis and, although the Defendant lived up to that obligation with respect to payments under the first contract in March 2000, and the first of two payment installments under the second contract, he failed to live up to the obligation in respect of the second installment on the second contract of June, 2000 as well as the third contract we entered into with Agriculture and Agri-Food Canada.

4. THAT I retained the services of a solicitor and previously demanded payment of my part of the proceeds from the Defendant but the Defendant did not respond to the demand. The total amount which I am claiming against the Defendant is the sum of $23,750.00, exclusive of interest as at May 1, 2001.

5. THAT based on all of the foregoing and the particulars set out in the Statement of Claim filed herein, the Defendant is justly and truly indebted to me for the full amount of the claim.

6. THAT to the best of my information and belief, Canada Trust, the above-named proposed Garnishee, is indebted to Kevin Durst, the above-named Defendant, in an amount which I am unable to specify.

7. THAT I make this Affidavit for the purpose of obtaining a Pre-Judgment Garnishee Summons, pursuant to the provisions of s. 3 of *The Attachment of Debts Act*, R.S.S. 1978, c. A-32.

SWORN before me at the City of Regina, in the Province of Saskatchewan, this 17th day of December, 2001.

A COMMISSIONER FOR OATHS in and for the Province of Saskatchewan.
My Commission Expires:

ERIC UPSHALL

This document was delivered by:

OLIVE WALLER ZINKHAN & WALLER
Barristers and Solicitors
202, 2255 Thirteenth Avenue
Regina, Saskatchewan
S4P OV6

Address for Service: Same as Above

Lawyer in Charge of File: Perry D. Erhardt

Telephone: (306) 359-1888

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Appendix "B"

Listing of the 10 persons interviewed in the order of their interview being conducted

(i) The Honourable Clay Serby

(ii) Eric Upshall

(iii) Gordon Nystuen

(iv) David Boehm

(v) Dan D'Autremont

(vi) Harold Cushon

(vii) Terrance Scott

(viii) David Culver

(ix) Judy Samuelson

(x) Dwain Lingenfelter

Appendix "C"

Listing of copies of documents filed with the Speaker

(i) Written notes of oral report provided to Minister Serby and Deputy Minister Nystuen as prepared by Harold Cushon

(ii) Agreement dated March 6, 2000 between Her Majesty the Queen in Right of the Province of Saskatchewan, as represented by the Minister responsible for the Department of Agriculture and Food and Kevin Durst & Associates

(iii) Agreement dated June 29, 2000 between Saskatchewan Agriculture and Food and Kevin Durst and Associates

(iv) Chronology of Events prepared by David Boehm

(v) Executive Summary of report dated June 12, 2001 prepared and formally presented at meeting of Department officials June 21, 2001